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N.L.H.  
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Cooper et al.

Serial No.: 09/689,722

Filed: October 13, 2000

For: METHOD OF MAKING A  
COSMETIC COVER

Art Unit: 1732

Examiner: LEE, Edmund J.

ELECTION

Hon. Director of the Patent  
and Trademark Office  
Washington, D. C. 20231

SIR:

Applicants respectfully request a complete reconsideration of the requirement for election of October 1, 2002, as it is believed to be wholly erroneous. Nevertheless, in order to comply with the requirement to make an election, applicants hereby elect with traverse the species set forth in paragraph 1(a) of the Office Action. Claim 5 is specifically directed to the elected species, and it is believed that claims 1 to 5 are readable thereon.

It is submitted that the PTO has misconstrued claim 1 and improperly applied election practice. The species set forth in paragraphs 1(a) through (d) of the Office Action are embodiments of the generic recitation contained in claim 1 of "means to create a non-homogenous colour effect." Thus, the use of colored lengths of fibers (paragraph 1(a)); the variation in thixotropy (paragraph 1(b)); the use of dye-containing capsules (paragraph 1(c)); and the introduction of dye into a layer (paragraph 1(d)) are all disclosed embodiments of the means

to create a non-homogenous colour effect recited in claim 1. Further these different embodiments are recited in claims dependent on claim 1.

Accordingly, it is submitted that claim 1 is generic to the four species set forth in paragraphs (a) through (d) of the Office Action and claimed respectively in claims 5, 6, 7, and 10, and must be examined along with the claims directed to the elected species. If generic claim 1 is found to be allowable, claims to the four disclosed species would also be allowable.

Claims 13-15 may be considered directed to inventions independent from that of claims 1-12.

It is respectfully submitted that the proper course is to consider claim 1 to be generic, to examine claims 1-12, and to hold claims 13-15 withdrawn from further consideration in this application. If generic claim 1 is found not allowable, claim 5 should be examined because it is drawn to the elected species. Applicants, of course, reserve the right to file divisional applications directed to the inventions defined by claims 13-15 and to the non-elected species if no generic claim is ultimately found allowable.

All necessary extensions of time are requested. Please charge any necessary fees and credit any excess to deposit account 50-1088.

Respectfully Submitted,  
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